

REL: 01/13/2017

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

2150521

Atlantis Entertainment Group, LLC

v.

City of Birmingham

**Appeal from Jefferson Circuit Court
(CV-15-284)**

DONALDSON, Judge.

Atlantis Entertainment Group, LLC ("Atlantis"), appeals from the judgment of the Jefferson Circuit Court ("the trial court") affirming the resolution of the City of Birmingham ("the City") that revoked Atlantis's business licenses and

2150521

rescinded approval of Atlantis's division I dance permit and special retail liquor license. We affirm the judgment.

Facts and Procedural History

Atlantis operated a nightclub and event venue ("the nightclub") in a building located within the territorial limits of the City. The building is in a shopping center that included a barbershop, a convenience store, a car wash, and a gas station. Daniel Vu, who is described in the record as the owner of Atlantis, also owns the properties in which the nearby businesses are located. An apartment complex is adjacent to those properties.

In 2012, the Birmingham City Council ("the city council") issued resolutions approving of Atlantis's applications for a special retail liquor license and a dance permit.¹ Atlantis

¹Regarding a special retail liquor license, § 28-3A-19, Ala. Code 1975, provides:

"Upon applicant's compliance with the provisions of this chapter and the regulations made thereunder, the [Alabama Alcoholic Beverage Control Board] shall issue a special retail license in wet counties for a state park, racing commission, fair authority, airport authority, or civic center authority, or the franchises or concessionaire of such park, commission or authority, and may, in its discretion, issue a special retail license to any other valid responsible organization of good reputation for such

2150521

began operating under that license and permit. The City also issued business licenses to Atlantis, but the record does not indicate when those licenses were issued.

On July 28, 2015, the city council conducted a public hearing ("the city council hearing") to consider revoking Atlantis's business licenses and rescinding its approval of Atlantis's special retail liquor license and dance permit. At the city council hearing, Steven Hoyt, a city council member, and Julie Barnard, a representative from the legal department of the City, both reported that the City had received a number of complaints about the operation of Atlantis. Although Hoyt praised Vu's operation of Atlantis, he stated that Vu had since turned over the operation of the business to other

period of time not to exceed one year and upon such terms and conditions as the board shall prescribe, which will authorize the licensee to purchase, where the retail sale thereof is authorized by the board, liquor and wine from the board or as authorized by the board and table wine and beer from any wholesale licensee of the board and to sell at retail and dispense such alcoholic beverages as are authorized by the board at such locations authorized by the board upon such terms and conditions as prescribed by the board. Provided, however, no sale of alcoholic beverages shall be permitted on any Sunday after the hour of 2:00 A.M."

2150521

people. Hoyt expressed his concern for the safety of the patrons of Atlantis and residents living near the nightclub. Other council members also expressed their concerns over events that had been advertised and held by Atlantis.

Ralph Patterson, a detective with the Birmingham Police Department and an investigator for the Alabama Public Safety Commission, stated that the city council members had been provided at the city council hearing with 12 police reports associated with Atlantis's operations. According to Patterson's statement, the police reports that were dated within six months of the hearing included descriptions of one false alarm, three incidents of assault resulting in injuries by gunshot, three incidents of shootings into occupied buildings, two incidents of shootings into occupied motor vehicles, and one incident involving the serving of an arrest warrant. Earlier police reports dated from October 26, 2014, to January 19, 2015, included incidents of harassment, a theft of personal property, a motor-vehicle break-in, a stolen motor vehicle, and a false alarm.

Jeremy Cooper, a manager of Atlantis, along with Vu and his wife Stephanie Dang, spoke in favor of maintaining

2150521

Atlantis's licenses and permits. Vu discussed efforts that had been made by Atlantis to provide sufficient security personnel for events. Vu stated that he was not aware of any shootings that had occurred at the nightclub, and he questioned the accuracy of the addresses used in the police reports. Cooper stated that the incidents referenced in the police reports happened nearby but not on Atlantis's property. In response to questions from city council members about the location of the reported shooting incidents, Patterson stated the following:

"Each incident report was done at a time when the club was open or closing. Those were Thursday nights, which fall into Friday, or Saturday nights, which go into Sunday morning.

"Each of these reports was done sometime between 11 p.m. and most often about 4 a.m. when this venue had been open. And the reports were done with a lot of specifics in the narrative of the incident reports where the individuals that are victims stated that they were leaving Club Atlantis when the shootings took place, whether they were shot in a vehicle, whether they were shot outside.

"The five incidents on the 16th of February, the first person that yelled at him in the narrative, LVP, LVP, LVP, and then they shot him.

"Then following that, there were four apartments adjacent to this location that were shot up.

"In all fairness, we want to be very fair to, not only ownership, the management, the patrons, but these are independent police reports that were done

2150521

either by off-duty officers or officers that were called from the west precinct to the scene."

Patterson stated that the police officers described the parking areas for patrons of Atlantis in their reports and further stated:

"There is parking directly across the street that they use. There is a car wash over there that is vacant. At night there is a barber shop that's across the street they use for parking. But everything is in close proximity to this establishment."

At the city council hearing, the city council voted unanimously to revoke all of Atlantis's business licenses and permits and to rescind the approval of Atlantis's liquor license. The city council issued a resolution on July 28, 2015, declaring the following:

"WHEREAS, [the city council] heard testimony from [Atlantis's] representatives and the Birmingham Police Department related to the incidents and complaints at the business of persons injured or shot at or in the parking lot of Atlantis Center and damage to neighboring property that occurred in February and March, 2015; and,

"WHEREAS, [the city council] finds that the business activity as conducted by the licensee relates to the assaults and shootings at the property; and,

"WHEREAS, Ordinance No. 97-193, as amended, provides grounds for which [the city council] may

2150521

revoke the business license for any business, including

"If the licensee, his agent, servant, or employee has operated the business for which the license was issued in such a manner as to be detrimental to the public health, safety or welfare or so as to constitute a nuisance'; and,

"WHEREAS, Ala. Code 1975, Sec. 28-1-6(a), prescribes conditions under which [the city council] can refuse its consent to a business's licensing by the Alabama Alcoholic Beverage Control [('ABC')] Board and whereas [the city council] may consider those reasons to rescind its consent to a business's ABC license; and,

"WHEREAS, [the city council] finds the existence of conditions under Ala Code. 1975, Sec. 28-1-6(a)(1)b.2., 'Circumstances clearly detrimental to or which would adversely affect the public health, safety, and welfare of the adjacent residential neighborhoods,' and Ala. Code 1975, Sec. 28-1-6(a)(1)b.7., 'Any other reason that poses a risk'; and,

"WHEREAS, [the city council] finds that it is in the best public interest of the City and the citizens of Birmingham that the business licenses previously issued to [Atlantis] ... be revoked and, furthermore, that Resolution No. 226-12 for a Special Retail Liquor License, approved on February 21, 2012, and Resolution No. 227-12, for a Division I Dance Permit, approved on February 21, 2012, for this business be rescinded.

"NOW THEREFORE BE IT THEREFORE RESOLVED by [the city council] of [the City], that the following business licenses issued to [Atlantis] ... under the following schedules of the Business License Code of

2150521

the City of Birmingham, Ordinance No. 97-183, as amended, hereby are revoked and canceled:

"007A AGENTS, DEALERS OR OTHER BUSINESS
084A DIVISION I DANCING

"150M RETAIL BEER (ON-PREMISES AND
OFF-PREMISES CONSUMPTION)

"1500 SPECIAL RETAIL - MORE THAN 30 DAYS

"150Y MONTHLY THREE PERCENT (3%) LIQUOR TAX

"213B REAL ESTATE LEASE OR RENTAL - SELF
STORAGE

"BE IT FURTHER RESOLVED by [the city council] of [the City] that Resolution No. 226-12 for a Special Retail Liquor License, approved on February 21, 2012, and Resolution No. 227-12, for a Division I Dance Permit, approved on February 21, 2012, for this business are hereby rescinded and canceled."

On August 4, 2015, Atlantis filed a complaint in the trial court alleging that the City had failed to follow its ordinances in revoking Atlantis's business licenses and rescinding approval of its liquor license and dance permit and/or that the City took such action in an arbitrary and capricious manner. The City answered the complaint and asserted various defenses. The trial court determined that Atlantis's complaint would be treated as a petition for the writ of certiorari and proceeded accordingly.

2150521

The trial court received into evidence a video recording of the city council hearing, the police reports submitted to the city council with information redacted, and the police reports without any information redacted. The parties stipulated that Atlantis had received a properly issued liquor license before the city council hearing.

Testimony at the hearing before the trial court established the following. Vu operated Atlantis when it was first formed in 2012. In July 2014, Cooper began managing Atlantis's operations. In March 2015, Patterson visited the nightclub and spoke to Cooper. According to Patterson's testimony, he informed Cooper of complaints that had been made against Atlantis and the reports of violence associated with the operation of the business. On July 8, 2015, Cooper and an attorney representing Atlantis attended a meeting of the City's public-safety committee. During that meeting, police reports listing the nightclub as the site of the incidents described in the reports were discussed. Cooper informed Vu about the meeting and the contents of the police reports. Several of the incidents described in the police reports presented at the city council hearing took place in the

2150521

parking areas of the businesses located near the nightclub. The patrons of the nightclub used those areas for parking during events held by Atlantis. According to the testimony of several police officers, patrons of the nightclub also used the parking lots of a nearby apartment complex, resulting in complaints from residents of the apartments. Events at the nightclub often drew an audience of 300 to 400 people. Atlantis hired private contractors as well as off-duty Birmingham police officers to serve as security personnel. At Cooper's request, on-duty officers were called upon to help with the traffic congestion created by patrons leaving after large events.

Vu testified that he hired 6 to 15 security personnel and a minimum of 2 to 15 off-duty police officers to provide security for events at the nightclub. Two police officers who worked off-duty at the nightclub during the six-month period before the city council hearing testified that normally four to five off-duty police officers provided security services during the nighttime operations at the nightclub, with one or two officers working outside in the parking area and the remainder working inside the building.

2150521

Patterson testified that he had worked for the City's police department since 1992, that he had worked for 18 years investigating establishments with liquor licenses for compliance with licensing and permitting, and that he had worked as an off-duty police officer at establishments with liquor licenses. Patterson testified that the police reports listed the address of the nightclub as the site of incidents involving victims or perpetrators who were patrons of Atlantis. According to Patterson's testimony, the security personnel and safety measures utilized by Atlantis were insufficient for the size and type of the crowd attending Atlantis's events.

Patterson testified that one of his duties was to collect all police reports, including reports of false-alarm incidents, listing the address of a licensed establishment in order to impartially present information to the city council at a hearing. The police reports presented to the city council in this case included reports of an incident involving a false alarm and of an incident involving the serving of an arrest warrant by an off-duty police officer. Atlantis presented testimony that the address for the site of the incidents on

2150521

some of the police reports presented to the city council had been redacted. Patterson testified that, at the city council hearing, he had stated that the police reports listed the address of the nightclub. The trial court acknowledged that, in a video recording of the city council hearing, city council members did not appear to examine the police reports during the hearing. Hoyt testified that the city council was presented with the police reports, and Patterson testified that the reports were provided to the city council before the hearing began.

Atlantis presented the testimony of Scott Morro, who worked for four years with the public-safety committee of the City and who made recommendations to the city council regarding business licensing of junkyards. Morro testified that Atlantis's operation did not cause the incidents described in the police reports, that there was criminal activity in the area where the nightclub was located that was not associated with Atlantis, and that the police department rather than Atlantis was responsible for addressing that criminal activity. Morro further testified that the listing of the address of the nightclub in the reports was misleading

2150521

when the incidents occurred in the parking area of a neighboring business or apartment complex.

On February 3, 2016, the trial court entered a judgment affirming the City's resolution. Atlantis filed a motion to alter and amend the judgment, arguing among other things that the City's resolution was based on false, inaccurate, and misleading evidence; that the revocation of Atlantis's business licenses and the rescission of approval of its dance permit and liquor license was arbitrary and capricious; and that the City had failed to provide Atlantis with proceedings comporting with procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution as well as by Article 1, § 6, of the Alabama Constitution of 1901. On March 7, 2016, the trial court entered an order denying Atlantis's postjudgment motion. On March 21, 2016, Atlantis filed a notice of appeal to this court. This court transferred the appeal to the Alabama Supreme Court for lack of subject-matter jurisdiction. Our supreme court then transferred the appeal to this court, pursuant to Ala. Code 1975, § 12-2-7(6).

Discussion

2150521

Atlantis challenges on appeal the trial court's judgment affirming the City's decision to revoke Atlantis's business licenses and to rescind its approval of Atlantis's liquor license and dance permit. Initially, we must determine the appropriate standard of review. Atlantis devotes a large portion of its arguments toward the City's rescission of its approval of Atlantis's liquor license. Atlantis describes the City's resolution as a revocation of its liquor license. We observe that the Alabama Alcoholic Beverage Control Board ("the ABC Board") is vested with the power to issue and renew licenses permitting the sale of alcohol. § 28-3A-3(a), Ala. Code 1975. As described later, Atlantis could not receive a liquor license from the ABC Board without obtaining the approval of the City, but the ABC Board is vested with "full and final authority as to the suspension or revocation of any license" it has issued. § 28-3A-24, Ala. Code 1975. Proceedings before the ABC Board are required in order to revoke or suspend an issued liquor license, § 28-3A-3(c), and the record lacks any indication that the ABC Board has revoked Atlantis's liquor license. The City's resolution, therefore,

2150521

did not in itself revoke the liquor license issued by the ABC Board to Atlantis.

The proceedings in the trial court addressed only the City's actions and did not include the ABC Board. The City argues that the trial court properly reviewed the City's resolution regarding the liquor license under the standard applicable to a petition for the writ of certiorari. In Birmingham Derby Club, Inc. v. City of Birmingham, 134 So. 3d 419, 421 (Ala. Civ. App. 2013), this court stated:

"Alabama appellate courts have held that a petition for a writ of certiorari is the proper method for seeking judicial review of municipal decisions as to which no prescribed method of review exists. See Sanders v. City of Dothan, 642 So. 2d 437, 440 (Ala. 1994) (revocation of municipal business license)."

Atlantis argues that it was entitled to a de novo review in the trial court pursuant to § 28-1-6(a), Ala. Code 1975, which provides:

"(1) All other provisions of law, rules, or regulations to the contrary notwithstanding, the Alabama Alcoholic Beverage Control Board shall absolutely have no authority to issue any form of license in a Class 1 municipality, including, but not limited to, off-premises consumption licenses, restaurant licenses, or club licenses, for the retail sale of any form of intoxicating beverages, including, but not limited to, malt liquor, beer, wine, liquor, or other alcoholic beverage regulated

2150521

by the board, unless one of the following requirements is satisfied:

"a. The application has first been approved by the governing body of the Class 1 municipality in which the site of the license is situated.

"b. The denial of approval by the Class 1 governing body has been set aside by order of the circuit court of the county in which the site is situated on the ground that the municipal approval was arbitrarily or capriciously denied without a showing of one of the following:

"1. The creation of a nuisance.

"2. Circumstances clearly detrimental to or which would adversely affect the public health, safety, and welfare of the adjacent residential neighborhoods.

"3. A violation of applicable zoning restrictions or regulations.

"4. An individual applying for the license has a prior conviction involving the use of alcohol or a controlled substance.

"5. The proximity of the business to a school or child care facility and the business hours of the operation will create a harmful environment for the children.

2150521

"6. The traffic congestion created by licensing the proposed location will endanger others.

"7. Any other reason that poses a risk.

"(2) Proceedings in the circuit courts to review an action of a Class 1 municipal governing body denying approval of an application shall be expedited de novo proceedings heard by a circuit judge without a jury who shall consider any testimony presented by the city governing body and any new evidence presented in explanation or contradiction of the testimony. Any proceeding to review the denial of approval of a license application shall be commenced within 14 days of the action by the municipal governing body and shall be set for hearing by the court within 30 days thereafter."

Section 28-1-6(a) limits the ABC Board's authority to issue a liquor license to an applicant whose premises are located within a Class 1 municipality without the approval of the municipality. Accordingly, under such circumstances, an applicant for a liquor license must obtain approval from the appropriate municipality before the ABC Board may issue the liquor license. Section 28-1-6(a) provides for judicial review by a circuit court when a Class 1 municipality denies approval for a liquor-license application. Because the City is a Class

2150521

1 municipality, § 28-1-6(a) applies to its denials of pending liquor-license applications.²

Atlantis was not, however, an applicant for a liquor license at the time of the city council hearing. Atlantis had been operating for over three years with a liquor license that had already been approved by the City and issued by the ABC Board. Atlantis contends that the right to judicial review pursuant to § 28-1-6(a) impliedly extends to a review of the City's resolution rescinding its prior approval of Atlantis's application for a liquor license because the resolution, Atlantis asserts, was, in effect, a "deferred denial" of its liquor license. Atlantis's argument, thus, equates a municipality's denial of approval of a liquor-license application with a municipality's rescission of approval of a liquor license already issued by the ABC Board. Although a municipality's denial of approval prohibits the ABC Board from issuing a liquor license pursuant to § 28-1-6(a), a municipality's rescission of approval does not in itself

²"Birmingham is a Class 1 municipality, as defined in § 11-40-12, Ala. Code 1975, because its population was more than 300,000 inhabitants as certified by the 1970 federal decennial census." Biggs v. City of Birmingham, 91 So. 3d 708, 711 n.2 (Ala. Civ. App. 2012).

2150521

revoke a liquor license. In other words, the two types of municipal actions do not have an equivalent legal effect. Atlantis, therefore, fails to show that the judicial review by a circuit court provided in § 28-1-6(a) extends to the City's resolution in this case.

Therefore, we agree with the City's assertion that the trial court properly reviewed the City's resolution regarding the liquor license pursuant to the standard applicable to a petition for the writ of certiorari because, in the absence of a right provided by statute, the only method of judicial review available to Atlantis was by a petition for the common-law writ of certiorari. See Phase II, LLC v. City of Huntsville, 952 So. 2d 1115, 1119 n.3 (Ala. 2006) ("Where there is no statutory right of direct appeal from a local government's decision to deny an application for a liquor license, the only proper method of judicial review is by the common-law writ of certiorari."); Sanders v. City of Dothan, 642 So. 2d 437, 440 (Ala. 1994) (quoting Southall v. Stricos Corp., 275 Ala. 156, 159, 153 So. 2d 234, 237 (1963)) ("[C]ommon-law certiorari is the appropriate method to have the courts determine the question as to whether a liquor

2150521

license was revoked without cause where there is no prescribed method.'").

The parties agree that the trial court properly treated the portion of Atlantis's complaint regarding the revocation of its business licenses and the rescission of approval of its dance permit as a petition for the writ of certiorari. Because we have not been provided with authority prescribing any other method of review of the City's resolution regarding Atlantis's business licenses and dance permit, we agree with the parties that the trial court also properly reviewed that portion of the City's resolution pursuant to the standard applicable to a petition for the writ of certiorari. See Birmingham Derby Club, 134 So. 3d at 421 ("[This court is] not aware of[] any authority that would permit a circuit court to hear an appeal from a municipality's denial of dance-permit applications.").

Therefore, the trial court properly applied the standard applicable to a petition for the writ of certiorari to the City's resolution regarding Atlantis's liquor license, business licenses, and dance permit. The following standard applied to the trial court's review of the City's resolution:

"'[T]he standard of review for certiorari limits the scope of review to questions of law and does not

extend to review of the weight and preponderance of the evidence.' Parker v. Reaves, 531 So. 2d 853 (Ala. 1988). Thus, 'if there is any legal evidence to support the decision of the lower tribunal, such is conclusive on the reviewing court.' Lovelady v. Lovelady, 281 Ala. 642, 206 So. 2d 886 (1968). In other words, the only question for the reviewing court is 'whether the evidence will justify the finding [of the lower tribunal] as a legitimate inference from the facts proved regardless of whether such inference would or would not have been drawn by the appellate tribunal.' Alabama Electric Cooperative v. Alabama Power Co., 278 Ala. 123, 126, 176 So. 2d 483, 485 (1965)."

Sanders, 642 So. 2d at 440.

"A municipality has the 'broad' discretion to approve or disapprove the issuance of liquor licenses with respect to locations within the municipality. See § 28-3A-11, Ala. Code 1975; Ott v. Everett, 420 So. 2d 258, 260 (Ala. 1982). However, the decision of the municipality in denying an application for a liquor license is subject to judicial review and is reversible if it is shown that the municipality acted arbitrarily in denying the application for a liquor license. See Black v. Pike County Comm'n, 375 So. 2d 255 (Ala. 1979); Inn of Oxford, Inc. v. City of Oxford, 366 So. 2d 690 (Ala. 1978); see also Hamilton v. Town of Vincent, 468 So. 2d 145, 147 (Ala. 1985) (affirming trial court's judgment after finding that the liquor-license applicant had failed to carry burden of showing arbitrary and capricious action by licensing authority)."

Phillips v. City of Citronelle, 961 So. 2d 827, 829 (Ala. Civ.

App. 2007).

""A determination is not 'arbitrary' or 'unreasonable' where there is a reasonable

2150521

justification for its decision or where its determination is founded upon adequate principles or fixed standards. State Department of Pensions and Security v. Whitney, 359 So. 2d 810 (Ala. Civ. App. 1978).

""If reasonable minds may well be divided as to the wisdom of [the] administrative board's actions, or there appears some reasonable basis for the classification made by the board, such action is conclusive and the court will not substitute its judgment for that of the administrative body.""

Phase II, 952 So. 2d at 1119 (quoting City of Huntsville v. Smartt, 409 So. 2d 1353, 1357-58 (Ala. 1982), quoting in turn Hughes v. Jefferson Cty. Bd. of Educ., 370 So. 2d 1034, 1037 (Ala. Civ. App. 1979)).

""This court's scope of appellate review [of a judgment entered on a petition for the writ of certiorari] is the same as that of the circuit court."" Franks v. Jordan, 55 So. 3d 1218, 1221 (Ala. Civ. App. 2010) (quoting Holland v. Pearson, 20 So. 3d 120, 122 (Ala. Civ. App. 2008), quoting in turn South Alabama Skills Training Consortium v. Ford, 997 So. 2d 309, 324 (Ala. Civ. App. 2008), quoting in turn Colbert Cty. Bd. of Educ. v. Johnson, 652 So. 2d 274, 276 (Ala. Civ. App. 1994)). The trial court's judgment is therefore due to be affirmed if the record provides a reasonable basis on which the City could have relied in making its decision. See

2150521

Sanders, 642 So. 2d at 442 (affirming municipality's decision when "[t]he evidence produced during the commission meetings [provided] a basis on which the commission--without acting arbitrarily or capriciously--could have decided to revoke the lounge's license").

Both parties presented testimony to the trial court, and neither party sought to exclude any testimony from being considered as evidence. In our consideration of the trial court's findings and conclusions based on disputed testimony, we are guided by the ore tenus standard of review:

"When the testimony is presented ore tenus, the trial court's findings and conclusions thereon are given the same weight as the verdict of a jury, and will not be disturbed unless palpably wrong.' Harrelson v. Glisson, 424 So. 2d 591, 592 (Ala. 1982) (affirming municipal action upon lounge liquor-license application); see also Black[v. Pike Cty. Comm'n], 375 So. 2d [255,] 258 [(Ala. 1979)] (affirming trial court's judgment entered after ore tenus liquor-license review proceeding where 'its findings [were] supported by credible evidence, and [were] not clearly erroneous or manifestly unjust'). Under that standard, the circuit court's judgment in this case, which contains no express findings, will be affirmed "if, under any reasonable aspect of the testimony, there is credible evidence to support the judgment.'" Transamerica Commercial Fin. Corp. v. AmSouth Bank, N.A., 608 So. 2d 375, 378 (Ala. 1992) (quoting Clark v. Albertville Nursing Home, Inc., 545 So. 2d 9, 13 (Ala. 1989))."

Phillips, 961 So. 2d at 830-31.

2150521

Atlantis contends that the City acted arbitrarily and capriciously in revoking its business licenses and in rescinding approval of its liquor license and dance permit. The party arguing that it was subject to arbitrary and capricious action on the part of a municipality has the burden of "show[ing] that there is no reasonable justification supporting the municipality's decision." Phase II, 952 So. 2d at 1119. Atlantis argues that its business activity was not related to the incidents described in the police reports of assault, shootings, and damage to neighboring property.

In its resolution, the city council found that the operation of the nightclub created a nuisance or circumstances that were detrimental to the public health, safety, and welfare of the adjacent residential neighborhood. Atlantis does not dispute that the City could have relied upon those factors, if supported by credible evidence, to revoke its business licenses and to rescind approval for the liquor license and dance permit. Evidence in the record supported the following findings: either the victims or perpetrators described in the police reports were patrons of Atlantis; the incidents in the police reports occurred either on Atlantis's

2150521

premises or in areas its patrons used for parking; Atlantis's management was responsible for hiring security personnel; the security employed by Atlantis was insufficient to ensure safety in the areas where the patrons parked; and violence toward Atlantis's patrons resulted in danger to residents and property damage in nearby apartments. In addition, the trial court received testimony that on-duty police officers were routinely called to assist with congested traffic conditions after events at the nightclub. Although Atlantis presented evidence to the trial court that conflicted with those factual findings, this court "'will not disturb the decision of the trial court, sitting without a jury, on conflicting evidence that is partly ore tenus, unless it is contrary to the great weight of the evidence.'" Ruttenberg v. Friedman, 97 So. 3d 114, 121 (Ala. 2012) (quoting American States Ins. Co. v. Copeland, 534 So. 2d 275, 278 (Ala. 1988)). Because substantial evidence supports the conclusion that Atlantis's operation created a nuisance and circumstances that were detrimental to the public health, safety, and welfare of the adjacent residential neighborhood, the judgment cannot be reversed based on the conflicting evidence Atlantis presented.

2150521

Atlantis asserts that the police reports relied upon by the city council were altered and/or false. The record indicates that some information on some of the police reports presented at the city council hearing had been redacted. The trial court received testimony that the redactions were made to protect personal information of individuals named in the reports. Testimony also showed that many of the incidents occurred in areas used by patrons of Atlantis for parking and that the address of the nightclub was listed as the site for the incidents because the incidents involved patrons of Atlantis. Atlantis further asserts that, during the city council hearing, the police reports were not disseminated to the city council members and, thus, that the City's resolution was based only on oral descriptions of the reports and not on the reports themselves. The trial court, however, received testimony that the police reports had been provided to city council members. Moreover, we are not presented with a legal reason why the city council could not have considered Patterson's oral descriptions of the information in the police reports. ""Questions of fact or weight or sufficiency of the evidence will not be reviewed on certiorari."" Taylor v.

2150521

Huntsville City Bd. of Educ., 143 So. 3d 219, 226 (Ala. Civ. App. 2013) (quoting Ford, 997 So. 2d at 324, quoting in turn Personnel Bd. Of Jefferson Cty. v. Bailey, 475 So. 2d 863, 868 (Ala. Civ. App. 1985)); see also Ruttenberg, supra. We conclude that the trial court was not required to reverse the City's decision on this basis.

Atlantis also argues that the city council's consideration of the police reports was limited to reports of incidents that occurred within the six months immediately preceding the city council hearing, pursuant to § 24.4 of Ordinance No. 97-183 of the City ("the ordinance"), which states, in relevant part, regarding hearings on revoking or refusing to renew business licenses:

"(c) At the hearing, [the city council] shall hear all evidence offered by any party and all evidence that may be presented bearing upon the question of revocation or the refusal of renewal, as the case may be. The licensee or applicant shall have the right to introduce witnesses and evidence in his behalf. [The city council] shall hear all witnesses and evidence in support of the revocation or refusal of such license.

"(d) If, after the hearing, a majority of [the city council] shall be of the opinion that such licensee is operating or has within six months operated such business in an illegal manner or in such a manner as to be detrimental to public health, safety or welfare or as to constitute a nuisance, or that the

2150521

licensee or his agent has filed or caused to be filed any application, affidavit, statement or other misleading statement or omission of a material fact in connection with the issuance or renewal of said license, [the city council] shall, by resolution, forthwith revoke the license of such licensee or refuse the renewal of said license. No refund of any license fee shall be made if the license is revoked."

(Emphasis added.)

Even if the ordinance applied to the city council hearing and the City's resolution, we conclude that Atlantis's argument fails to show any noncompliance with the ordinance by the City. The ordinance allows the city council to consider all evidence regarding the revocation or refusal of a license presented at the hearing. The ordinance requires that, after the hearing, if the city council decides to revoke or refuse a license based on the illegal or detrimental operation of the business, such operation must have occurred within six months before the hearing. The evidence shows that many of the incidents in the police reports occurred within six months of the city council hearing. Accordingly, the City could have found from that evidence that Atlantis operated its business in a manner detrimental to public health, safety, or welfare within the six-month period preceding the hearing.

2150521

Atlantis next contends that the city council conducted the city council hearing in a manner inconsistent with due process. "[P]rocedural due process, protected by the Constitutions of the United States and this State, requires notice and an opportunity to be heard when one's life, liberty, or property interests are about to be affected by governmental action." Brown's Ferry Waste Disposal Ctr., Inc. v. Trent, 611 So. 2d 226, 228 (Ala. 1992). The City does not argue that Atlantis did not have a protected property interest at issue in these proceedings; therefore, we will proceed to address the arguments as presented.

Atlantis argues that it was denied a reasonable opportunity to controvert the evidence presented against its position. At one point in the city council hearing, Vu asked the city council for the "correct[,] accurate addresses" of the incidents described in the police reports. The trial court, however, received testimony that, before the city council hearing, Atlantis's manager and attorney attended a meeting of the City's public-safety committee regarding the concerns with Atlantis where the police reports were discussed and that Vu was informed of what occurred at the meeting and

2150521

of the police reports. We note that both Vu and Cooper stated to the city council that the incidents, including the shootings described in the police reports, did not take place on Atlantis's premises. The record, therefore, indicates that Atlantis was not denied the opportunity to controvert the descriptions in the police reports showing that the incidents stemmed from Atlantis.

In further support of its argument that the process used by the city council was flawed, Atlantis refers to Vu's testimony before the trial court that council member Lashunda Scales would not allow Cooper to respond to a question she asked and that she "just cut us off." At the city council hearing, Vu stated that up to 15 off-duty police officers were employed at events at the nightclub when larger crowds were expected. The following is the exchange, in relevant part, between Scales and Vu:

"MS. SCALES: ... So I want to know what kind of events are you having that requires 15 off-duty police officers. Is it for crowd control or safety?"

"MR. VU: It's basically for crowd control, because sometimes in the (inaudible) when we are booking artists, that day requires such--you know, that many police officers or security just for safety. And, also, if we feel like--"

2150521

"MS. SCALES: Here is what I am saying, because I don't want to cut you off.

"MR. VU: Right.

"MS. SCALES: I don't mean to. I don't want to come across as being rude, because I don't have long--I don't have much more time to talk.

"MR. VU: Sure.

"MS. SCALES: But what I am asking, sir, are these rap acts that you are bringing or contests like Slap that B, blah, blah, blah, those kind of things, those highly sexual type of events that is going to draw a certain crowd that without proper crowd control is going to be a problem? Are those the kind of events that you have at Atlantis?

"MR. VU: No. Basically, just when we bring artists, rap artists.

"MS. SCALES: Are they rap artists?

"MR. VU: Yes.

"MS. SCALES: Okay. Are they gangster rap, regular rap? What kind of rap are we doing?

"MR. VU: To be honest with you, I don't--I don't--I don't know anything about--

"MS. SCALES: You just make money off of it. I get it.

"Okay. Mr. Chair, I'm sorry. Thank you, sir."

We determine that the trial court was not compelled by the exchange between Vu and Scales to find, as asserted by Atlantis, that "the City did not have, or care to have, the

2150521

correct facts before them to make a fair decision whether to revoke Atlantis's licenses." See Taylor, supra; Ruttenberg, supra.

Furthermore, assuming that the city council had not allowed Atlantis to present information, Atlantis fails to identify what material evidence it would have provided. We conclude that Atlantis fails to show that the conduct of the city council hearing deprived Atlantis of its right to due process.

Atlantis additionally argues in its principal brief that "[Hoyt], who lives near the Atlantis location, had personal motives in spearheading, along with [Patterson], the City's action to revoke Atlantis's licenses." Atlantis, however, fails to provide facts from the record, other than the City's adverse resolution, to show that Hoyt or Patterson had a personal motive or bias behind their actions in this case. "[A]dverse rulings during the course of the proceedings are not by themselves sufficient to establish bias and prejudice." Baldwin v. Baldwin, 160 So. 3d 34, 38 (Ala. Civ. App. 2014) (quoting Hartman v. Board of Trs. of the Univ. of Alabama, 436 So. 2d 837, 841 (Ala. 1983)). Atlantis therefore

2150521

fails to demonstrate that the impartiality of the city council was compromised by Hoyt's and Patterson's participation in the proceedings.

Atlantis further asserts that other city council members' treatment of the witnesses in support of Atlantis were displays of hostility that showed bias and prejudice on the part of the rest of the city council. Atlantis refers only to exchanges between the witnesses and one council member, Scales. In addition to the exchanges involving Vu and Cooper discussed in regard to Atlantis's due-process arguments, Atlantis also refers to the following exchange between Scales and Dang:

"MS. SCALES: ... Let me ask you something. Who is the--can you identify the young lady behind you, sir?

"MR. VU: This is--

"MRS. VU: Yes. Good morning. Councilor. I'm Stephanie. I'm his wife.

"And we run the store for--or in the hood almost for ten years. And, you know, I love the hood. And I--you know, even though I have--yeah, neighborhood. And I--I have twins. I stay at home. Every day I come to the shopping center and, you know, make sure they keep everything clean.

2150521

"And, you know, I--you know, you can ask all of the neighborhood there, you know, how they love us and we love them and I have no trouble with that.

"MS. SCALES: Yes. But I haven't asked you anything yet. I know you've got your script. I just needed him to identify who you are.

"MRS. VU: Yes, ma'am.

"MS. SCALES: I also heard the word 'the hood' too.

"MRS. VU: Yes.

"MS. SCALES: So I got that too. Okay. I can-- when you have got limited vision, you can hear extremely well. So I did hear that. Okay.

"Don't hold that against her, sir. All right.

"Let me ask you something. Can you come to the microphone, sir? Ma'am, I won't put you on the spot.

"MR. VU: Yes, ma'am."

Our review of the record reveals no evidence compelling the trial court to find that the city council's decision was based on hostility toward Vu, Dang, or Cooper. See Taylor, supra; Ruttenberg, supra.

Atlantis also argues that the City did not present evidence to the trial court that the neighborhood around the nightclub had improved after the City passed its resolution revoking Atlantis's business licenses and rescinding approval

2150521

of Atlantis's liquor license and dance permit. The issue is whether the City had sufficient evidence at the time of that decision, not the effect of the decision. Moreover, Atlantis, not the City, had the burden to show that City's decision was arbitrary and capricious. See Phase II, 952 So. 2d at 1119. Atlantis also asserts that the city council failed to carefully inquire into the basis for its decision. The city council conducted a hearing in which Atlantis was allowed to present evidence. Evidence in the record supports the credibility of the police reports describing incidents of violence and a connection between the operation of Atlantis and those incidents. The inquiry for this court is whether legal evidence supported the City's decision. It is beyond the scope of our review to reweigh the evidence, to substitute our judgment for that of the City, or to assess the purported consequences of the City's decision. See Taylor, supra; Ruttenberg, supra.

Atlantis also argues that the motion made at the city council hearing to revoke or rescind all of Atlantis's licenses was improper based on a failure to follow Robert's Rules of Order. Atlantis does not direct us to legal authority

2150521

establishing that the city council was bound by such procedures in its consideration of Atlantis's business and liquor licenses.

Because legal evidence reasonably justifies the City's decision, we affirm the trial court's judgment determining that the City did not act arbitrarily and capriciously in revoking Atlantis's business licenses and rescinding approval of Atlantis's applications for a dance permit and a liquor license. Atlantis's request for attorney fees on appeal is denied.

AFFIRMED.

Thompson, P.J., and Pittman, Thomas, and Moore, JJ.,
concur.